

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6089 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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AMITKUMAR ATULKUMAR SHAH

Versus

TAXATION OFFICER AND REGIONAL TRANSPORT OFFICER

Appearance:

1. Special Civil Application No. 6089 of 2002
MR JV JAPEE for Petitioner No. 1
MR SUDHIR MEHTA, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr Sudhir Mehta, learned AGP waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 3-1-2002 passed by the State Government in the Home Department (Motor Transport) (Annexure B) rejecting the petitioner's revision application under Section 40A of the Motor Vehicles Act, 1988 and confirming the order dated 27-4-2001 passed by the Commissioner of Transport (Annexure A) rejecting the NT Forms filed by the petitioner for nonuse of his vehicle bearing registration No.GJ.1.V. 2266 for the period from 1-5-2000 to 30-9-2000.

3. The impugned order of the Commissioner of Transport was passed on the ground that the reason given by the petitioner for nonuse was not covered by the provisions of Rule 3A and, therefore, the nonuse permission cannot be granted. The State Government has confirmed that order both on the ground that the reason given by the petitioner did not fall within Rule 3A and also on the ground that the petitioner had shifted the vehicle from Ahmedabad to Talod before obtaining the permission for such shifting of the vehicle.

4. Mr Japee, learned counsel for the petitioner has submitted that the ground given by the respondent that the reason given by the petitioner falls outside the purview of Rule 3A is contrary to law as declared by the Hon'ble Supreme Court in State of Gujarat vs. Kaushikbhai K Patel AIR 2000 SC 2175 and again by this Court in Akhil Gujarat Pravasi Vahan Sanchalak Mahamandal, Ahmedabad vs. State of Gujarat AIR 2002 GUJARAT 121. It is further submitted that the grounds given by the respondents in the reply affidavit dated 31-7-2002 were not mentioned in the impugned orders and, therefore, the same are not required to be considered.

5. On the other hand, Mr Sudhir Mehta, learned AGP for the respondents, has submitted that the application for nonuse permission in the NT Forms is required to be given in advance. No such application was made by the petitioner for the month of May, 2000. For the month of June, 2000, application was given on 30-6-2000 but the necessary fee for the same was paid on 1-7-2000. Therefore, the application was not made in accordance with law for the months of May and June, 2000. As far as the subsequent months are concerned, it is submitted that as the petitioner was in arrears for the months of May

and June, 2000, the applications were not required to be considered in view of the provisions of Section 12 of the Bombay Motor Vehicles Tax Act, 1958.

6. Having heard the learned counsel for the parties, it appears to the Court that the ground given by the Commissioner of Transport that the vehicle was not kept in nonuse for reasons beyond the control of the petitioner is a ground which could not have been taken into consideration. The Hon'ble Supreme Court has already held in the aforesaid decision in State of Gujarat vs. Kaushikbhai K Patel that all that is relevant for exemption from payment of tax under the Bombay Motor Vehicles Tax Act, 1958 is whether the vehicle was use in a particular month or not and that the reasons for nonuse would not be relevant; it is only the factum of nonuse which is to be considered.

7. Having regard to the aforesaid law declared by the Hon'ble Supreme Court, the grounds given by the Commissioner of Transport will have to be declared as illegal and rejection of the petitioner's application on that basis will also have to be declared as illegal. However, in view of the facts pointed out in the reply affidavit that the petitioner had not made an application for the month of May, 2000 and that the application for the month of June, 2000 was made on 30th June, 2000 but the fees along with the application were paid on 1st July, 2000, it would be just and proper to direct, and it is accordingly directed, that if the petitioner deposits with the respondents motor vehicle tax for the months of May and June, 2000, the respondents shall reconsider the petitioner's applications - the NT Forms for nonuse of the vehicle for the period from July, 2000 onwards and on the same basis if the petitioner has filed NT Forms for the period from October, 2000 onwards, the same shall also be considered by the authorities as per the above direction. The petitioner's application in the NT Forms shall be reconsidered as aforesaid latest within two months from the date on which the petitioner pays the motor vehicle tax for the months of May and June, 2000.

8. Rule is accordingly made absolute to the aforesaid extent.

Direct service is permitted.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-